

Receipt
1600
5/23

Attorney's Docket No.: 07148-025003 / A15-539.06



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Richard M. Broglie et al. Art Unit : 1638
Serial No. : 09/643,579 Examiner : Russell Kallis
Filed : August 22, 2000
Title : GENES FOR MUTANT MICROSOMAL DELTA-12 FATTY ACID
DESATURASES AND RELATED ENZYMES FROM PLANTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY TO RESPONSE TO
REQUEST FOR CORRECTED FILING RECEIPT

In reply to the Response to Request for Corrected Filing Receipt mailed on May 13, 2003 (copy enclosed), Applicants request that the filing date be corrected to August 22, 2000. The attached Decision, mailed on February 28, 2003 (copy enclosed), indicates that the correct filing date is August 22, 2000.

Please supply a corrected Filing Receipt to the undersigned with respect to this application. A copy of the original Filing Receipt showing the desired change in red ink is attached for your convenience.

No fee is believed to be due. If, however, there are any charges or credits, please apply them to Deposit Account No. 06-1050.

Respectfully submitted,

Date: _____

6/11/03

Fish & Richardson P.C., P.A.
60 South Sixth Street, Suite 3300
Minneapolis, MN 55402
Telephone: (612) 335-5070
Facsimile: (612) 288-9696

Monica McCormick Graham, Ph.D.
Reg. No. 42,600

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

June 11, 2003
Date of Deposit
Signature
Kathryn J. Sanderson
Typed or Printed Name of Person Signing Certificate

MSE
RCU
MNG

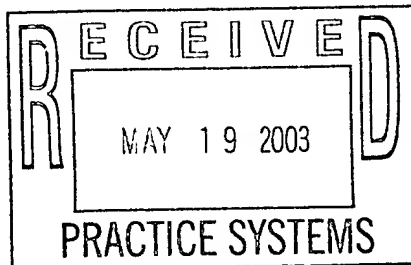
UNITED STATES PATENT AND TRADEMARK OFFICE

07148-025003

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER OF PATENTS AND TRADEMARKS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

| APPLICATION NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTY. DOCKET NO./TITLE |
|--------------------|-------------|------------------------|------------------------|
| 09/643,579 | 11/25/2002 | Richard Martin Broglie | BB1334 USNA CNT1 |

26191
 FISH & RICHARDSON P.C.
 3300 DAIN RASCHER PLAZA
 60 SOUTH SIXTH STREET
 MINNEAPOLIS, MN 55402



CONFIRMATION NO. 3114



OC000000010025108

Date Mailed: 05/13/2003



RESPONSE TO REQUEST FOR CORRECTED FILING RECEIPT

Application Filing Date

In response to your request for a corrected Filing Receipt, the Office is unable to comply with your request because:

- ☐ The correct application number appears on the Filing Receipt. Your postcard included an incorrect application number. Please update your records to reflect the application number on the enclosed Filing Receipt. See MPEP 503.
- ☐ If your application was submitted under 37 CFR 1.10, your filing date should be the "date in" found on the Express Mail label. If there is a discrepancy, a request for a corrected Filing Receipt should be submitted along with a copy of the Express Mail label showing the "date in."
- ☐ A copy of the Express Mail label was not enclosed with your request. Please resubmit.
- ☐ The date on the Express Mail label is the date given on the Filing Receipt.
- ☒ The filing date accorded to the application is the date the application met the filing date requirements of 37 CFR 1.53(b) or (c).
- ☐ Filing date of a parent application cannot be changed by this request. A request for corrected Filing Receipt must be directed to such parent application.
- ☐ Applications submitted under 37 CFR 1.8 are accorded a filing date as of the date the application is received in the U.S. Patent and Trademark Office.
- ☐ The filing date on your return postcard is the same as the date on your Filing Receipt.

- ☐ A petition under 37 CFR 1.10 or 1.53 is needed to correct the filing date. The petition should be directed to the attention of the Office of Petitions.

Any corrections that may need to be done to your Filing Receipt should be directed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

*A copy of this notice **MUST** be returned with the reply.*

Ruth BERTEL

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY

DOCKETED BY PRACTICE SYSTEMS

ACTION: Correct OFR

BASE: 5-13-03

DUE: 6-13-03

DEADLINE: 6-13-03

INITIALS: gm

Docketed By Billing Secretary

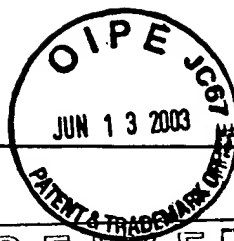
Due Date: _____

Deadline: _____

Initials: _____



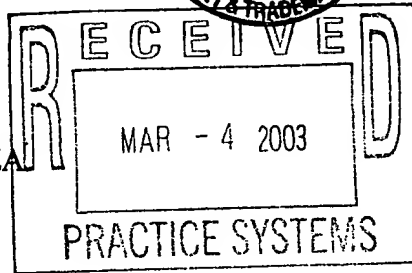
UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

USE
RCI
MMG

FISH & RICHARDSON P.C.
3300 DAIN RASCHER PLAZA
60 SOUTH SIXTH STREET
MINNEAPOLIS MN 55402



Paper No. 14

COPY MAILED

FEB 28 2003

In re Application of
Broglie, et al.
Application No. 09/643,579
Filed: August 22, 2000
Attorney Docket No. 07148-025003
For: GENES FOR MUTANT MICROSOMAL
DELTA-12 FATTY ACID DESATURASES AND
RELATED ENZYMES FROM PLANTS

OFFICE OF PETITIONS REQUESTED BY PRACTICE SYSTEMS

ACTION: *File Prelim. Amm*
ON PETITION *2-28-03*
BASE: *3-28-03*
DUE: *3-28-03*
DEADLINE: *3-28-03*
INITIAL: *OPM*

This is a decision on the petition filed December 4, 2002 (certificate of mailing date November 25, 2002), requesting, in effect, withdrawal of a Notice of Omitted Item(s) in a Nonprovisional Application (Notice), mailed September 26, 2002. The petition will be treated under 37 CFR 1.53(e).

The application was filed on August 22, 2000. However, on September 26, 2002, the Office of Initial Patent Examination Division mailed a Notice stating that the application had been accorded a filing date of August 22, 2000, and advising applicants that pages 37, 38 and 39 of the specification appeared to have been omitted.

In response, the present petition was filed. Petitioners argue that pages 37, 38 and 39 of the specification should be included with the papers filed on August 22, 2000, because they were originally filed in prior application No. 0232,948, the entire disclosure of which was incorporated by reference at the time of filing.

The petition is **DISMISSED**.

The mailing of a "Notice of Omitted Items" permits the applicants to either: (1) promptly establish prior receipt in the PTO of the items at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted items in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing items were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted items in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted items with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)).

In this case, petitioners assert that the missing pages were actually deposited in the PTO on August 22, 2000 with the other application papers. However, they offer no proof to bolster their position.

Instead, applicants seek to add the pages to the present application on the basis that the pages are not new matter. However, no petition is necessary for that purpose. Additional pages of

| | |
|-------------|-------------------|
| Docketed By | Billing Secretary |
| Due Date: | 3/28/03 |
| Deadline: | 3/28/03 |
| Initials: | OPM 3/4/03 |

specification may be entered by the primary examiner without a petition so long as the pages contain no new matter. See MPEP § 608.02(a).

MPEP 201.06(c) states that:

... an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied)

If applicants desire that pages 37, 38 and 39 be added to the application, the appropriate procedure is by way of amendment requesting the entry of the pages. Any such amendment should be filed prior to the first action on the merits and will be considered by the primary examiner.

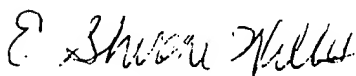
Accordingly, the petition is inappropriate and is subject to dismissal.

The petition fee will not be refunded, since the petition was not necessitated by any error on the part of the USPTO.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of **August 22, 2000**. Pages 37, 38 and 39 will not be processed at this time.

Thereafter, the application will be forwarded to Technology Center 1600 for examination in due course.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6712.



E. Shirene Willis
Senior Petitions Attorney
Office of Petitions



UNITED STATES
PATENT AND
TRADEMARK OFFICE



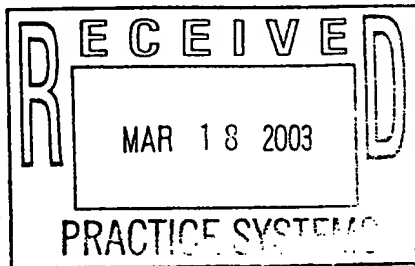
HSE
RCL
mmg

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

07148-025003

| APPLICATION NUMBER | FILING DATE | GRP ART UNIT | FIL FEE REC'D | ATTY. DOCKET NO | DRAWINGS | TOT CLAIMS | IND CLAIMS |
|--------------------|------------------------|--------------|---------------|---------------------|----------|------------|------------|
| 09/643,579 | 11/25/2002 08/22/00 | 1638 ✓ | 1448 | BB1334 USNA CNT1 | 4 | 36 | 8 |

26191
FISH & RICHARDSON P.C.
3300 DAIN RASCHER PLAZA
60 SOUTH SIXTH STREET
MINNEAPOLIS, MN 55402



CONFIRMATION NO. 3114

UPDATED FILING RECEIPT



OC000000009648912

Date Mailed: 03/14/2003

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Richard Martin Broglie, Landenberg, PA;
Lorin Roger DeBonte, Ft. Collins, CO;
William Dean Hitz, Wilmington, DE;
Guo-Hua Miao, Hockessin, DE;
Robert Stefan Reiter, Urbandale, IA;

DOCKETED BY PRACTICE SYSTEMS

ACTION: Correct OFR
BASE: 3-14-03
DUE: 4-14-03
DEADLINE: 4-14-03
INITIALS: JM

Domestic Priority data as claimed by applicant

This application is a CON of 09/232,948 01/19/1999 ABN
which is a CON of 08/728,025 10/09/1996 ABN

Foreign Applications

If Required, Foreign Filing License Granted: 09/29/2000

Projected Publication Date: 06/26/2003

N n-Publication Request: No

Early Publication Request: No

| | |
|-------------------------------|--------------------|
| Docketed By Billing Secretary | |
| Due Date: | <u>4/14/03</u> |
| Deadline: | <u>4/14/03</u> |
| Initials: | <u>JMS 3/19/03</u> |

JMS

| | |
|--------------------------------------|----------------------|
| * No Docketing Required * | |
| Reviewed By Practice Systems | Initials: <u>RMZ</u> |
| Reviewed By Billing Secretary | Initials: <u></u> |

Title

Genes for mutant microsomal delta-12 fatty acid desaturases and related enzymes from plants

Preliminary Class

800

**LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15**

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).